

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

STEPHEN PHILLIPS, MARY
TOURVILLE-PHILLIPS, SANDI
BARNETT, GREGORY BENJAMIN,
TYRUS DAVIS, and CHRISTOPHER
BINGHAM, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

CALIBER HOME LOANS, INC.

Defendant.

Case No.: 19-cv-02711-WMW-LIB

**DECLARATION OF HASSAN A. ZAVAREEI IN SUPPORT
OF PLAINTIFFS' MOTION FOR FEES, COSTS, AND
SERVICE AWARD**

I, Hassan A. Zavareei, declare:

1. I am an attorney admitted pro hac vice in this matter and admitted to practice in the District of Columbia and State of California. I am a partner at Tycko & Zavareei ("TZ"), and counsel of record for Plaintiffs and the Class in this case. I have personal knowledge of all of the facts set forth in this Declaration unless otherwise stated, and I am competent to testify to these facts if called on to do so.

2. I make this Declaration in support of Plaintiffs' Motion for Fees, Costs, and service awards in connection with this class action settlement with Caliber Home Loans, Inc. ("Caliber"). In that regard, I discuss, in the following order: (a) the history of this litigation, which includes a summary description of the legal services provided by TZ in this litigation, including expected work under the Settlement Agreement; (b) the risks borne by TZ and the Plaintiffs; (c) TZ's experience; and (d) the time, rate, expenses, and other data underlying the application for attorneys' fees and costs.

History of the Litigation

3. This settlement consolidates the instant matter (“*Phillips*”) with two other matters: *Barnett, et al. v. Caliber Home Loans, Inc.*, Case No. 2:19-cv-309 (S.D. Tex.) (“*Barnett*”) and *Davis, et al. v. Caliber Home Loans, Inc.*, Case No. 1:20-cv-00338 (M.D.N.C.) (“*Davis*”) (collectively the “Lawsuits”).

4. On April 15, 2020, TZ and Bailey Glasser LLP (“BG”) filed *Davis*. At the time BG had been working with Carney Bates and Pulliam PLLC (“CBP”) on the *Barnett* and *Phillips* matters. Before settlement talks were initiated, the substantive litigation in *Davis*, such as the preparation of pleadings and discovery, and motion practice, was handled by BG and TZ. TZ did not perform work on *Barnett* and *Phillips*, and CBP did not perform work on *Davis*. That said, all matters benefitted from the three firms experience in handling these cases, and some efficiencies were achieved. Once settlement talks began, the three firms began working collectively together to achieve a global resolution of the claims.

5. Prior to filing *Davis*, attorneys at my firm spent substantial time investigating the factual and legal bases for the matters set forth in the complaints. Attorneys at my firm interviewed potential class members, reviewed information about the fees charged by Caliber on its website, reviewed documents provided by the Plaintiffs and other potential class members, and researched the applicable law.

6. The work done to bring *Davis* in late 2019 and throughout 2020 was part of work done by my firm in connection with a series of lawsuits against mortgage loan servicers for the collection of Pay-to-Pay fees from residential borrowers. See *Lembeck v. Arvest Central Mortgage Co.*, No. 3:20-cv-03277-VC (N.D. Cal.), *Lange v. Arvest Central Mortgage Co.*, No. 4:20-cv-293-LPR (E.D. Ark.), and *Miller v. Arvest Central Mortgage Co.*, No. 20-010342-CA-01 (Fla. Cir. Ct., Miami-Dade Cty.); *Austin v. Lakeview Loan Servicing*, No. 1:20-cv-01296-RDB (D. Md.); *Brown v. Lakeview Loan Servicing*, No. 3:20-cv-00280-FDW-DSC (W.D.N.C.); *Brown v. PennyMac Loan Services*, No. 5:20-cv-01052-FMO(KKx) (C.D. Cal.); *Cheney v. Lakeview Loan Servicing*, No. 3:20-cv-03016 (N.D. Cal.); *Dan/kins v. Carrington Mortgage Co.*, No. 20-cv-60998 (S.D. Fla.); *Elbert v. RoundPoint Loan Servicing*,

No. 3:20-cv-00250-MMC(N.D. Cal.); *Owoc v. LoanCare LLC*, No. 20-cv-60805-RS (M.D. Fla.); *McFadden v. Nationstar Mortgage Co. d/b/a Mr. Cooper*, No. 1:20-cv-00166-EGS (D.D.C.); *Ochondo v. Specialized Loan Servicing*, No. 1:20-cv-00701 (D. Colo.); *Tabat v. Select Portfolio Services*, No. 3:19-cv-01264-HES-JRK (M.D. Fla.); *Thomas-Lawson v. Carrington Mortgage Co.*, No. 1:19-cv-03567-CCB (D.Md.); *Fernandez v. Rushmore Loan Servicing*, No. 30-2020-01128156-CU-AT-CXC (Cal. Sup. Ct., Orange Cty.) (collectively “Related Litigation”). Each of these cases was filed with my co-counsel, James Kauffman of Bailey Glasser LLP (“BG”). As discussed in more detail in the concurrently filed Declaration of James Kauffman, Mr. Kauffman and BG had filed several other similar cases against other mortgage loan services before our two firms worked on these matters.

7. Throughout the work on *Davis*, and the Related Litigation, TZ worked closely with BG to formulate case strategy. Work was divided between the firms to avoid duplication of efforts. In the course of billing, efforts were also undertaken to ensure that work performed that collectively benefited these Lawsuits as well as Related Litigation was not disproportionately being attributed to the Lawsuits herein. Rather, the billing records and work performed herein do not reflect every hour of work performed that directly benefited this litigation; rather, counsel was able to occasionally rely on templates or research done in conjunction with cases that moved slightly ahead of this case.

8. Throughout litigation of *Davis*, both TZ and BG contributed to the written work product. TZ consulted with clients and prepared the complaint, as well as researched the legal theories and statutes in the states at issue in *Davis* (Maryland and North Carolina). TZ sought BG’s consultation in the preparation, due to the BG’s prior experience in this area.

9. Caliber filed a motion to dismiss in *Davis*. TZ and BG divided up sections of the opposition brief. Each firm provided input and consultation on the various sections.

10. TZ and BG shared case management responsibilities in *Davis*, negotiating stipulations, researching local rules and procedures, and alternating responsibility for various filings.

11. TZ remained in regular contact with the Plaintiffs in *Davis*. The Plaintiffs had experienced disruptions in their communications from Caliber for various reasons. COVID-19 may

have caused delay in mail. Caliber appeared to have required communication to be routed through counsel, which resulted all correspondence being sent to counsel's office. This correspondence not only included routine mortgage loan statements, but important correspondence regarding COVID-19 issues and responses to inquiries from Plaintiffs to Caliber on unrelated matters. Moreover, because of Caliber's practice of placing litigation flags on customers involved in litigation, Plaintiffs often were unable to speak directly with customer service to address unrelated mortgage loan servicing issues. One Plaintiff, Mr. Bingham, had his mortgage loan transferred to a new servicer. To help resolve these issues, TZ remained in contact with both Plaintiffs and counsel for Caliber.

12. With BG's consultation, TZ prepared Requests for Interrogatories, Requests for Admission, and Requests for the Production of Documents in *Davis*.

13. Once settlement talks began, the three firms took care to avoid duplicative litigation efforts. All three firms were involved in settlement strategy and negotiations. TZ took the lead in drafting the mediation statement, with BG and CPB's input. Attorneys from TZ, BG, and CPB attended the mediation.

14. Once an agreement in principal was reached, TZ solicited bids from various claims administrators. Due to the size of the class, the cost of notice was high, and TZ engaged in a number of conversations with settlement administrators to devise a cost-effective plan for disseminating notice and funds to class members. The firms ultimately selected a funds distribution method by which class members would receive their distributions on pre-paid Mastercards. Because the typical distribution method involves paper checks, TZ engaged in a number of long conversations with the settlement administrator to ensure the program was fair, adequately communicated to class members, met this Court's standards, and would result in the efficient, reliable distribution of funds. During this process, TZ sought input from BG and CPB on the various proposals and methods of distribution. TZ also sought input from Caliber on this proposal and worked to ensure all concerns were addressed.

15. To get the settlement approved, TZ revised and edited the settlement agreement, motion for preliminary approval, amended complaint, and notices to the class. There were also a number of case management filings to be submitted to each of the three courts. TZ contributed to the work for the filings for *Davis*, and after being admitted pro hac vice to *Phillips*, assisted with the filings in this matter as well.

16. James Kauffman of BG argued the motion for preliminary approval before this Court. TZ assisted with preparations.

17. TZ gave final review to the notices before disseminating and worked with the notice administrator to ensure timely delivery of notice.

18. TZ reviewed the fee petition, prepared by CBP. Each firm drafted their respective declarations.

19. The firms will endeavor to divide up the remaining responsibilities, which will include:

- Preparation of the motion for final approval;
- Evaluate and respond to any objections received, if any;
- Communicating with the Plaintiffs and class members regarding the status of the settlement;
- Preparing for, appearing for, and arguing the motion for final approval; and
- Overseeing the distribution of settlement funds to class members.

20. In the course of TZ's work on these matters, attorneys at TZ, including me, communicated with the Plaintiffs. In my view, the two Plaintiffs took on a substantial risk by bringing claims against the company that currently serviced their home loans, and undertook reputational risk, as their association with these lawsuits is publicly available. As noted in Paragraph 11, *supra*, Plaintiffs experienced a number of challenges in communicating with Caliber regarding unrelated matters due to the lawsuit, and one had his mortgage transferred to a new servicer, which created stress and uncertainty. Plaintiffs also worked with counsel to provide information regarding their experiences and claims to enable them to join this case and represent a class throughout

litigation that has progressed for over a year. Plaintiffs conducted searches of their personal records and shared sensitive information, including bank records and mortgage documents. And Plaintiffs remained actively involved in the litigation after the Settlement was reached.

Risks Borne By TZ

21. In accepting this case, TZ bore considerable risk. TZ took this case on a fully contingent basis, meaning that we were not paid for any of our time, and that we paid all costs and out of pocket expenses without any reimbursement to date. From the outset, TZ recognized that it would be contributing a substantial amount of time and advancing significant costs in prosecuting this class action, with no guarantee of compensation or recovery, in the hopes of prevailing against a well-funded defense. During the pendency of the litigation, TZ turned away other work.

22. The theories advanced in this case were novel. While this Court and the Barnett Court issued favorable decisions on the motions to dismiss filed by Caliber, the Court in Davis had not yet ruled at the time the settlement was reached. There was no certainty that it would agree with this Court, as some district courts have rejected these claims and granted motions to dismiss in full. Indeed, TZ and BG's clients in a similar pay-to-pay lawsuit were recently on the losing side of a motion to dismiss in the Central District of California. *See Thomas-Lawson v. Carrington Mortg. Servs., LLC*, No. 220CV07301ODWEX, 2021 WL 1253578 (C.D. Cal. Apr. 5, 2021).

TZ's Experience

23. A true and correct copy of the firm resume of TZ was attached to the Declaration of Hassan Zavareei in Support of Plaintiffs' Motion for Preliminary Approval, filed May 14, 2021 at ECF No. 84.

24. TZ was named Class Counsel, Lead Counsel, or Settlement Class Counsel in the following consumer class actions: *Shannon Schulte, et al. v. Fifth Third Bank*, No. 1:09-cv-06655 (N.D. Ill.); *Kelly Mathena v. Webster Bank*, No. 3:10-cv-01448 (D. Conn.); *Nick Allen, et al. v. UMB Bank, N.A., et al.*, No. 1016 Civ. 34791 (Cir. Ct. Jackson County, Mo.); *Thomas Casto, et al. v. City National Bank, N.A.*, 10 Civ. 01089 (Cir. Ct. Kanawha County, W. Va.); *Eaton v. Bank of Oklahoma, N.A., and BOK Financial Corporation, d/b/a Bank of Oklahoma, N.A.*, No. CJ-2010-5209 (Dist. Ct. for Tulsa

County, Okla.); *Lodley and Tehani Taulva, et al., v. Bank of Hawaii and Doe Defendants 1-50*, No. 11-1-0337-02 (Cir. Ct. of 1st Cir., Haw.); *Jessica Duval, et al. v. Citizens Financial Group, Inc., et al*, No. 1:10-cv-21080 (S.D. Fla.); *Mascaro, et al. v. TD Bank, Inc.*, No. 10-cv-21117 (S.D. Fla.); *Theresa Molina, et al., v. Intrust Bank, N.A.*, No. 10-cv-3686 (18th Judicial Dist., Dist. Ct. Sedgwick County, Kan.); *Trombley v. National City Bank*, 1:10-cv-00232-JDB (D.D.C.); *Jonathan Jones, et al. v. United Bank and United Bankshares, Inc.*, No. 11-C-50 (Cir. Ct. of Jackson County, W. Va.); *Amber Hawthorne, et al. v. Umpqua Bank*, No. 4:11-cv-06700 (N.D. Cal.); *Sylvia Hawkins, et al. v. First Tennessee Bank, N.A.*, No. CT-004085-11 (Cir. Ct. of Shelby County, Tenn.); *Jane Simpson, et al. v. Citizens Bank, et al.*, No. 2:12-cv-10267 (E.D. Mich.); *Alfonse Forgione, et al. v. Webster Bank, N.A.*, No. UWY-CV12-6015956-S (Super. Ct. Judicial Dist. Of Waterbury, Conn.); *Sherry Bodnar v. Bank of America, N.A.*, No. 5:14-cv-03224-EGS (E.D. Pa.); *Wong v. TrueBeginnings LLC d/b/a True.com*, No. 3-07 Civ. 1244-N (N.D. Tex.); *Geis v. Airborne Health, et. Al.*, Civil Action No. 2:07 Civ. 4238-KSH-PS (D. N.J.); *Dennings, et al. v. Clearwire Corporation*, No. 2:10-cv-01859 (W.D. Wash.); *In Re: Higher One Oneaccount Marketing And Sales Practices Litigation*, No. 3:12-md-02407 (VLB) (D. Conn.); *Galdamez v. I.Q. Data International, Inc.*, No. 15-cv-1605 (E.D. Va.); *Brown v. Transurban USA*, No. 15-cv-494 (E.D. Va.), *Gatinella et al. v. Michael Kors (USA)*, 14-cv-5731 (S.D.N.Y); *Grayson, et al. v. General Electric Company*, 3:13-cv-1799 (D. Conn.); *Farrell, et al. v. Bank of America, N.A.*, No. 3:16-00492 (S.D. Cal.); *In re: APA Assessment Fee Litigation*, 1:10-cv-01780 (D.D.C.); *Griffith v. ContextMedia Health, LLC d/b/a Outcome Health*, No. 1:16-cv-02900 (N.D. Ill.); *Scott, et al. v. JPMorgan Chase & Co.*, No. 17-cv-249 (D.D.C.); *In re Think Finance, LLC, et al.*, No. 17-bk-33964 (Bankr. N.D. Tex.); *Gibbs v. Plain Green, LLC*, No. 3:17-cv-495 (E.D. Va.); and *Meta v. Target Corp., et al.*, No. 14-cv-0832 (N.D. Ohio). Each of these actions has resulted in a settlement that has been finally approved.

Lodestar and Expenses for TZ

25. Based on the time records of TZ, TZ has spent 229.2 hours on these Lawsuits since February 2020. The total number of hours, as well as the lodestar computed at our 2021 rates, is shown in the following table:

Name	Title	Hours	Rate	Lodestar
Allison Parr	Associate	6.50	\$468.00	\$3,042.00
David Lawler	Of Counsel	4.00	\$919.00	\$3,676.00
Dia Rasinariu	Associate	0.10	\$468.00	\$46.80
Hassan Zavareei	Partner	36.00	\$919.00	\$33,084.00
James Morrison	Paralegal	3.40	\$208.00	\$707.20
Jennifer Thelusma	Fellow	23.4	\$381.00	\$8,915.40
Katherine Aizpuru	Associate	15.70	\$676.00	\$10,613.20
Kristen Simplicio	Partner	122.80	\$764.00	\$93,819.20
Matthew Folkerts	Paralegal	0.40	\$208.00	\$83.20
Maura Dunn	Paralegal	1.70	\$208.00	\$353.60
Nicole Porzenheim	Paralegal	14.40	\$208.00	\$2,995.20
V Prentice	Associate	0.80	\$468.00	\$374.40
Total Hours/Lodestar		229.20		\$157,710.20

26. I reviewed the time entries, and believe the hours expended were reasonable and necessary to securing the result in this case. The above chart was prepared from contemporaneous detailed daily time records regularly prepared and maintained by TZ utilizing timekeeping software to which all employees have access. In my opinion, the time spent by attorneys and staff of TZ was reasonable and necessary. Indeed, by prosecuting this case purely on a contingency basis and not being paid by the hour, TZ attorneys and staff worked efficiently and avoided unnecessary work. The hourly rates are based on the typical hourly rates for lawyers of similar experience in the communities in which Class Counsel practice.

27. The hourly rates shown for the attorneys at Tycko & Zavareei are our 2021 rates charged as delineated by the Adjusted Laffey Matrix (<http://www.laffeymatrix.com/>), which provides market rates for attorneys working in the Washington, D.C. area. See, e.g., *DL v. Dist. of Columbia*, 924 F.3d 585 (D.C. Cir. 2019) (discussing the history and basis of the Laffey matrix). Although the Adjusted Laffey Matrix is updated annually, courts have awarded attorneys' fees consistent with the Adjusted Laffey Matrix to my firm in a number of cases. See, e.g., *Kumar v. Salov North America Corp.*, No. 14-CV-2411-YGR, 2017 WL 2902898 (N.D. Cal. July 7, 2017); *Stathakos v. Columbia Sportswear Co.*, No. 15-CV-04543-YGR, 2018 WL 1710075, at *6 (N.D. Cal. Apr. 9, 2018); *Meta v. Target Corp., et al.*, No. 14-cv-0832 (N.D. Ohio Aug. 7, 2018), Dkt. 179; *In*

re Think Finance, LLC, et al., No. 17-bk-33964 (Bankr. N.D. Tex.); *Brown v. Transurban USA, Inc.*, No. 1:15CV494 (JCC/MSN), 2016 WL 6909683 (E.D. Va. Sept. 29, 2016); *Small v. BOKF, N.A.*, No. 1:13-cv-01125-REB-MJW (D. Colo.); *Soule v. Hilton Worldwide, Inc.*, No. CV 13-00652 ACK-RLP, 2015 WL 12827769 (D. Haw. Aug. 25, 2015); *Beck v. Test Masters Educ. Servs., Inc.*, 73 F. Supp. 3d 12 (D.D.C. 2014); see also *Mancini v. Dan P. Plute, Inc.*, 358 F. App'x 886 (9th Cir. 2009); *Harris et al. v. Farmers Insurance Exchange et al.*, BC579498 (Cal. Super. Ct., L.A. Cty. Aug. 30, 2020) (accepting Adjusted Laffey Matrix as evidence of reasonable hourly rates charged by Washington, D.C. attorneys).

28. The total number of hours is based only on the hours reasonably expended to achieve an excellent result for the Settlement Class. Our firm coordinated our efforts in the litigation of this case with our co-counsel to ensure that there was no duplicative or unnecessary work. Because our firm is experienced in litigating actions of this type, we were able to efficiently divide tasks based on expertise.

29. In my opinion, the time expended and expenses incurred in prosecuting this action were reasonable and necessary for the diligent litigation and fair resolution of this matter. The lodestar reflected in the above extract does not include all of the time to be devoted to preparing for and appearing at the final approval hearing, or dealing with post-hearing matters.

30. I anticipate that TZ, BG, and CPB will devote substantial additional time to this case through its completion. Based on my experience, I predict that the additional work will cause the total lodestar at the close of this case to exceed the amount requested. Specifically, the following tasks (and estimated time to complete the work) will likely incur at least \$25,000 in lodestar, and more if there are objections:

- Preparation of this petition after September 30 (10 hours);
- Monitoring notice administration (3 hours);
- Evaluating and responding to any objections received, if any (3-25 hours);

- Preparing the motion for final approval and related declarations, including reviewing time records for updated fee and lodestar information and working with the notice administrator on necessary documentation (25 hours);
- Preparing for and appearing for the motion for final approval (5 hours);
- Communicating with the Plaintiffs and class members regarding the status of the settlement (5-10 hours); and
- Overseeing the distribution of settlement funds to class members (5 hours).

31. Tycko & Zavareei also carried some of the costs in this litigation—taking on this risk for the putative class members. Specifically, Tycko & Zavareei incurred \$650.60 in unreimbursed case-related expenses, including expenses related to filing, travel, copying, and case administration. Expenses are accounted for and billed separately and are not duplicated in my firm’s professional billing rate. TZ has not received reimbursement for expenses incurred in connection with this litigation. The actual expenses incurred in the prosecution of this case is reflected on the computerized accounting records of my firm prepared by bookkeeping staff, based on receipts and check records, and accurately reflect all actual expenses incurred. These expenses were necessary to prosecuting litigation of this size and complexity on behalf of the Settlement Class, and they are typical of expenses regularly awarded in large-scale class actions. Indeed, because Tycko & Zavareei was responsible for advancing all expenses incurred, Tycko & Zavareei had a strong incentive not to spend any funds unnecessarily. An itemized list of Tycko & Zavareei’s expenses is attached hereto as **Exhibit A**.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct, and that this declaration was executed in Washington, DC on October 7, 2021.


Hassan A. Zavareei

EXHIBIT A

Date	Description	Billable Value
2/6/2020	Postage	\$1.00
2/26/2020	Postage	\$2.00
2/26/2020	Postage	\$1.00
2/29/2020	Photocopies	\$8.70
3/1/2020	Westlaw online research in Feb 2020	\$2.56
3/10/2020	Postage	\$1.00
3/10/2020	Postage	\$1.00
3/31/2020	Photocopies	\$0.75
4/1/2020	Westlaw online research in Mar 2020	\$5.72
4/1/2020	Westlaw online research in Mar 2020	\$1.14
7/1/2020	Westlaw online research in Jun 2020	\$233.72
7/1/2020	Westlaw online research in Jun 2020	\$110.15
8/1/2020	Westlaw Online Legal Research in July 2020	\$85.35
8/31/2020	PACER 2nd quarter court document retrieval	\$114.50
11/30/2020	Court document retrieval during the 3rd quarter 2020	\$0.70
3/1/2021	Court document retrieval from Pacer in 4th Quarter 2020	\$0.10
3/31/2021	1st Quarter 2021 court document retrieval from Pacer	\$3.50
3/31/2021	Mar 2021 Westlaw online research	\$16.52
4/30/2021	Apr 2021 Westlaw online research	\$17.89
9/16/2021	Pacer Document Retrieval	\$43.30

Total: \$650.60